

App. No. 10/716,691
Amdt. Dated November 8, 2005
Reply to Office Action of September 8, 2005
Atty. Dkt. No. 8591-112

REMARKS/ARGUMENTS

This reply is responsive to an Office Action mailed on September 8, 2005. Reconsideration and allowance of the application and presently pending claims 1-18 are respectfully requested.

Present Status of the Patent Application

Claims 1-18 remain pending in the present application. Claims 1-18 have been rejected. Claims 1-18 have been amended.

Regarding the Final Rejection

Applicant respectfully requests reconsideration of the finality of the Office Action. No clear issue has been developed with the Examiner, since the Examiner switched references in this Office Action without any changes in the claims being made in response to the previous Office Action. Applicant has amended, when necessary, the claims to avoid all the grounds of rejection and objection. The Examiner and Applicant have both acted to bring the prosecution to as speedy a conclusion as possible. (Three Office Actions and three Responses within the last nine months) Therefore, the Applicant submits that the final Office Action was premature.

Response to Claim Rejections Under 35 U.S.C. §103

Claims 1-18 stand rejected under 35 U.S.C. §102(e) as allegedly being unpatentable over Howington (US PG Pub. No. 2002/0152120) in view of Miller, III (US Pat. No. 4,495,496). Applicant respectfully traverses this rejection.

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Independent Claim 1

Independent claim 1, as amended, is allowable for at least the reason that Howington and Miller, in combination or alone, do not disclose, teach, or suggest "continually monitoring movement of the guests over time within the confined area as they pass along a path of travel through the zones," "creating reports on the demographics and continuous movements of the guests," determining common traffic patterns of the guests based on the continuous movements of the guests as they move about the confined area," or "analyzing the traffic patterns of the guests to determine timing and location of amenities within the confined area."

In the Office Action, it is acknowledged that Howington fails to teach or fairly suggest continuous monitoring, but it is stated that Howington allegedly teaches "monitoring movement of the guests over time within the confined area as they pass along a path of travel through the zones" and "creating reports on the demographics and movements of the guests."

In this regard, and with reference to the teaching of the Howington patent, the Office Action has cited paragraphs [0022] and [0036]:

[0022] ... Patron information includes a wide variety of data including ***tracking patrons throughout the casino and any attached resort attractions***, tracking gaming, credit restaurant, recreational and retail transactions...

[0036] [As mentioned earlier, many casinos also employ data gathering techniques (e.g., magnetic swipe cards at each machine) for identifying a patron and] associated personal information, ***the patron's location within the casino***, that patron's wagering characteristics, that patron's affiliation with other groups or patrons, promotional items or comps related to the patron, and that patron's other activities related to arriving at, enjoying and departing from the casino. Embodiments of the present invention contemplate sharing of the patron related information with the machine management database information described earlier. The

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sharing of this information allows scores for and evaluation of games and players. Game and player-related relationships may also be compared on any basis such as game type, denomination, location, group, **age, sex, status, and club level.** ...

(Emphasis added by the Examiner. [] added for the response.)

As can be verified from a review of these cited portions of Howington, there is no teaching or disclosure of "monitoring movement of the guests over time within the confined area." Howington merely discloses at paragraph [0036] "data gathering techniques (e.g., magnetic swipe cards at each machine) for identifying a patron ..., the patron's location within the casino ..." Using this system, the **only** time the location of the patron is known occurs when the patron uses their card at a gaming machine, casino attraction, restaurant, or for any other transaction. The movements taken by the patron when moving from a first known location to a second known location is **not** identified by the Howington system. Locations visited by the patron that do not involve the use of this card are **not** identified, or for that matter, any location between machines where the patron's card is swiped. The current location of the patron is only as good as his most recent use of his card, which may be currently, minutes ago, or even hours ago. Furthermore, Howington makes no suggestion or teaching of associating any time with the activities of the patrons, such as time stamping. Howington is merely concerned with which activities the patron participated in, not when the patron participated in them or where the patron traveled between the machines where a card swipe took place. Therefore, Howington does not disclose "monitoring movement of the guests over time within the confined area as they pass along a path of travel through the zones".

As can be further verified from a review of these cited portions of Howington, there is no teaching or disclosure of "creating reports on the demographics and movements of the guests as they move about the confined area." Howington merely

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discloses the use of magnetic swipe cards or the like for identifying a patron at a particular location, such as a gaming machine, casino attraction, restaurant, or other location where they might make a transaction with their card. This information, at best, could provide reports showing a chronological listing of the locations the patron visited using their card, but would not be able to show the actual movement of the patron between these locations or any locations they visited without using their card. For instance, a guest merely observing the other players and not making any transactions with their card would not be distinguishable from a guest not physically located in the casino. To actually track "continuous movements of the guest", Howington would need to add a significant number of data collection devices for patron data 910 (FIG. 9) throughout the casino that the guest would be required to swipe their card at when passing. These extra devices would not only restrict movement about the casino (very undesirable for the casino), but would also be a nuisance and inconvenience for the guest. Furthermore, Howington's principle concern appears to be creating reports showing the location of their gaming machines (see Figs. 10-12) and the extent of their use, not the movements or even location of their guests. Therefore, Howington does not disclose "creating reports on the demographics and movements of the guests".

As can be still further verified by a review of Howington, there is no teaching or disclosure of "determining common traffic patterns of the guests based on the continuous movement of the guests" or "analyzing the traffic patterns of the guests to determine timing and location of amenities within the confined area." In fact, Howington is incapable of "determining common traffic patterns of the guests" which makes "analyzing the traffic patterns" impossible. Howington provides no teaching or suggestion that traffic patterns of the guests are of any importance. Therefore, Howington does not disclose "determining common traffic patterns of the guests" or "analyzing the traffic patterns of the guests to determine timing and location of amenities within the confined area."

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Accordingly, the rejection is deficient in these areas. Notwithstanding, the undersigned has reviewed the entirety of the Howington patent and has failed to identify any such teachings anywhere within this reference. Accordingly, the Howington patent fails to teach or disclose the elements of claim 1 as referenced by the Examiner (excluding the "continually" and "continuous" references), and the rejection of claim 1 should be withdrawn.

The Office Action combines Miller with Howington to allegedly teach the continuous monitoring aspect. However, Applicant submits that Miller does not teach the continuous monitoring aspect of tracking guests along paths of travel through zones substantially covering the confined area, and that the combination of these two references is improper. The Examiner must establish some suggestion or motivation to modify or combine the documents and establish that a reasonable expectation of success. (MPEP 2143)

Regarding the teaching of the Miller patent, the Office Action states that "Miller III teaches (entire document) continuous monitoring of a person's movement in a particular area." Applicant submits that the Miller patent does not support this statement, but merely teaches periodic monitoring of a person or object's location in an area. Clearly, periodic does not equate to continuous, and location does not equate to movement and certainly not movement of guests along paths of travel through zones covering substantially the confined area.

Specifically regarding periodic monitoring, in the Abstract the Miller patent states "[a] plurality of remote terminals having transceivers associated therewith are positioned in a mine and **periodically** are caused to transmit interrogation signals." (Emphasis added) The Miller patent does not further define "periodically", but a minimum period can be calculated using an example and calculation provided in the col. 4, lines 16-43. Assuming one remote terminal for each of the 15 mine sections and that each remote

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terminal interrogates separately, the minimum period would be one minute and fifteen seconds (15 remote terminals x 5 seconds for each remote terminal to interrogate all 256 transponder channels). This calculation does not take into account any communication time between a remote terminal and the host computer which may be significant in light of the maximum delay between the remote computer and response from the host computer of 3.2 seconds. Applicant is not trying to imply that the maximum interrogation rate is once every one minute and fifteen seconds, only that the interrogation rate for a system with fifteen remote terminals would be no better than this value, which does not indicate continuous monitoring. Therefore, the Miller patent discloses a periodic monitoring not a continuous monitoring, and the above calculated interrogation rate for the Miller device teaches away from the continuous monitoring aspect.

Similarly in regard to the monitoring of location, the title of the patent is "Personnel Monitoring and Locating System" and at column 2, lines 51-54 the Miller patent states that "remote terminals 21 may be positioned at predetermined entrances to different portions of the mine or at predetermined points in the mine shaft." The title implies location of a person not movement of a person, and the statement appears to imply there will be only one remote terminal for each portion or section of the mine, so that a remote terminal would only be able to discriminate that a particular miner with a transponder was located or presently positioned in that section, not any movement of the miner within that section. As suggested in the example in Miller noted above, fifteen miners may be working in a particular section. A section holding fifteen working miners would appear to be large enough to allow a considerable amount of movement of the miners. Therefore, this considerable amount of movement of the miners would not be acknowledged. The only movement of the miners acknowledged by the Miller system would be the movement of the miners from one section to another without disclosing the route taken. Furthermore, since the transponders are only interrogated

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periodically as discussed above, any movement of the miners occurring between Interrogation signals would also not be acknowledged. Therefore, the Miller patent discloses monitoring location of a person at a given interval of time, not movement of a person. The Miller patent teaches the taking of a series of "snap shots" to determine the location of miners in each section of the mine. Furthermore, Miller does teach or suggest "determining traffic patterns" or "analyzing the traffic patterns" of the miners, since Miller merely discloses knowing the location of the miners only at certain times throughout the day.

If, for the purpose of discussion, more remote terminals were added to the mine sections to improve location specificity within the section, then the Interrogation rate would decrease. Decreasing the interrogation rate means longer times between interrogation signals and the associated loss of movement. The system of Miller is not meant to continuously monitor movement of a person along a path of travel through zones of a confined area, because increasing location specificity decreases the interrogation rate and increasing the interrogation rate comes with the penalty of decreasing location specificity.

Regarding the suggestion or motivation to combine the references, the Office Action states the following: "Detailed and continuous data on a patron's movements in the setting Howington envisions could clearly be mined to further Howington's stated goals of improving customer service and targeted marketing." This statement provides no insight into how the "teachings" of Miller could be combined with the "teachings" of Howington, only with the "setting" of Howington. Merely stating that something would be useful in the Howington environment does not show any specific suggestion or motivation from Howington. It is, of course, not permissible to use hindsight, after a review of Applicant's disclosure, to provide the missing motivation or suggestion to combine. Howington merely suggests using the described transactional data for this

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purpose and does not suggest using any other data for this purpose. "Improving customer service and targeted marketing" is a broad statement that could encompass many things, but does not provide the suggestion or motivation to add to the Howington system data concerning continuous movement of the patron along a path of travel through zones of a confined area, for combining the teachings of Howington and Miller.

There is no motivation to combine the Howington and Miller references for the following reasons: 1) Howington contains no suggestion or motivation to continuously monitor the movement of a person along a path of travel through zones, Howington is merely concerned with the spending habits of the person and Miller is merely concerned with the location of the person; 2) the Miller system is designed to accommodate only 256 transponders (col. 4, lines 18-20) while the system of Howington pertains to a casino having over 500 gambling machines (see Fig. 10) which implies a requirement for monitoring over 500 people at a time (but not the other people in the casino); 3) the Howington system could not reasonably be modified to include the Miller system, the Miller system would have to be used in addition to the Howington system; and 4) the Miller device was designed for miners having a lamp on their cap and using the power cord from the battery of their cap-lamp to the transponder as an antenna, the patrons of the casino of Howington would not be equipped with cap-lamps, batteries, antennas, or any other similar devices.

Regarding the reasonable expectation of success, the Office Action makes no specific remarks. Applicant submits that there is not a reasonable expectation of success for the following reasons: 1) the Miller system is incapable of monitoring movement of patrons between the interrogation signals along a path of travel through zones; 2) the location specificity required to monitor continuous movement on a casino floor such as shown in Fig. 10 of Howington would drive the number of remote terminals to a high number (in the range of 50 to 100) thereby decreasing the maximum

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interrogation rate to between once every 6 to 12 minutes for the Miller system thus missing out on a significant amount of movement of patrons throughout the casino; 3) the Miller patent provides no indication that using multiple remote terminals in the same open area is a feasible use for its system (i.e., all transponders may reply back to all the transceivers, since there will be no tunnel walls separating the remote terminals); and 4) patrons of a casino would probably not consent to the wearing of a device that would have to include a sizeable battery, a transponder, and a three foot antenna as disclosed by the Miller patent.

Thus, there is simply no motivation to combine, nor even a suggestion of one. Also, even if the Howington system were somehow made to employ the Miller arrangement, the result would not be satisfactory (interrogation rate too low to continuously monitor movement, multiple remote terminals may provide misleading results if used in the same open area, and the casino patrons would not want to wear such a cumbersome device). Certainly, neither patent even suggests continuously monitoring the movement of people along paths of travel through zones covering substantially the entire confined area, nor suggests the "determining common traffic patterns based on the continuous movement of the guests." For at least the above reasons, the rejection of claim 1 should be withdrawn.

Independent Claim 7

Independent claim 7, as amended, is allowable for at least the reason that Howington and Miller do not disclose, teach, or suggest "means for continually monitoring movement of the guests over time within the confined area as they pass along a path of travel through the zones," "means determining common traffic patterns of the guests," "means for creating reports on the demographics and continuous movements of the guests," or "means for analyzing the traffic patterns of the guests to determine timing and location of amenities within the confined area" as described

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above regarding claim 1. Accordingly, the Howington and Miller patents fail to teach or disclose the invention as defined by claim 7, and the rejection of claim 7 should be withdrawn.

Independent Claim 13

Independent claim 13, as amended, is allowable for at least the reason that Howington and Miller do not disclose, teach, or suggest a "module for continually monitoring movement of the guests over time within the confined area as they pass along a path of travel through the zones," a "module for determining common traffic patterns of the guests," a "module for creating reports on the demographics and continuous movements of the guests," or a "module for analyzing the traffic patterns of the guests to determine timing and location of amenities within the confined area" as described above regarding claim 1. Accordingly, the Howington and Miller patents fail to teach or disclose the invention as defined by claim 13, and the rejection of claim 13 should be withdrawn.

Dependent Claims

Dependent claims 2-6, 8-12, and 14-18 are believed to be allowable for at least the reason that these claims depend from allowable independent claims 1, 7, and 13, respectively. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

CONCLUSION

The other cited art of record has been reviewed, and it is believed that the claims, as amended, patentably distinguish thereof.

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and rejections have been traversed,

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rendered moot, and/or accommodated, and that now pending claims 1-18 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Upon receipt of this reply, the undersigned would like to schedule an interview with the Examiner to discuss this matter at your earliest convenience. If you have any questions, please feel free to call the undersigned at 619-231-3666.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

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